



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-12; DA 13-535]

Auction of Lower and Upper Paging Band Licenses Scheduled for July 16, 2013; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 95

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the lower and upper paging bands (Auction 95). This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in the auction.

DATES: Applications to participate in Auction 95 must be filed prior to 6:00 pm Eastern Time (ET) on April 30, 2013. Bidding for construction permits in Auction 95 is scheduled to begin on July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and

Spectrum Access Division: For legal and general auction questions: Howard Davenport (attorney) at (202) 418-0660; Mobility Division: For licensing and service rule questions: Kathy Harris (attorney) or Keith Harper (engineer) at (202) 418-0620. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 95 Procedures Public Notice released on March 29, 2013. The complete text of the Auction 95 Procedures Public Notice, including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The Auction 95 Procedures Public Notice and related Commission

documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW, Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its website: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13-535. The Auction 95 Procedures Public Notice and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/95/>, or by using the search function for AU Docket No. 13-12 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs/>.

I. GENERAL INFORMATION

A. Introduction

1. On February 1, 2013, the Wireless Telecommunication Bureau (Bureau) released a public notice seeking comment on competitive bidding procedures to be used in Auction 95. No comments were submitted in response to the Auction 95 Comment Public Notice 78 FR 11179, February 15, 2013.

2. On March 29, 2013, the Bureau released a Public Notice that established the procedures and minimum opening bid amounts for the upcoming auction of 5,905 licenses for lower and upper paging bands spectrum. This auction, which is designated as Auction 95, is scheduled to start on July 16, 2013. This summary provides an overview of the procedures, terms and conditions governing Auction 95 and the post-auction application and payment processes.

3. Auction 95 will offer 5,905 licenses consisting of 4,902 licenses in the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, 454-460 MHz) and 1,003 licenses in the upper paging bands (929-931 MHz). Auction 95 will include licenses that remained unsold from previous auctions, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

4. Attachment A to the Auction 95 Procedures Public Notice provides a summary of the licenses available in Auction 95. Due to the large number of licenses in Auction 95, the complete list of licenses available for this auction will be provided in electronic format only, available as separate “Attachment A” files at <http://wireless.fcc.gov/auctions/95/>. The “Attachment A” files reflect corrections made to the market name provided for 43 of the licenses listed as available in this auction in the Auction 95 Comment Public Notice. Those licenses for which the market name has been corrected are noted by a single “*.” The market and license numbers for these licenses are unchanged.

B. License Descriptions

5. In the Paging Reconsideration Order, 64 FR 33762, June 24, 1999, the Commission concluded that the licenses in the lower paging bands should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the licenses in the upper paging bands should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs encompass the United States, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and American Samoa.

6. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B to the Auction 95 Procedures Public Notice.

C. Rules and Disclaimers

i. Relevant Authority

7. Prospective applicants must familiarize themselves thoroughly with the Commission’s general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective bidders should also familiarize themselves with the Commission’s rules relating to the lower and upper paging bands, and rules relating to applications, environment, practice and procedure. All bidders must

also be thoroughly familiar with the procedures, terms and conditions contained in the Auction 95 Procedures Public Notice and any future public notices that may be issued in this proceeding.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in the Bureaus public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>.

ii. Prohibited Communications and Compliance with Antitrust Laws

9. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

10. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction

market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**

11. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

12. Information concerning applicants’ license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

13. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant’s bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

14. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c)

provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

15. Auction 95 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

16. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

17. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

18. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.” Moreover, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant used the Commission’s bidding system to disclose “its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,” and has placed auction participants on notice that the use of its bidding system “to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.” Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as in the case for Auction 95, an applicant’s statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant’s public statement of intent not to participate in Auction 95 bidding could also violate the rule.

19. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

20. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 95. Specifically, applicants should avoid including any information in

their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

21. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

22. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

23. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

e. Section 1.2105(c) Certification

24. By electronically submitting a short-form application, each applicant in Auction 95 certifies its compliance with 47 CFR 1.2105(c). In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty to Report Prohibited Communications

25. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

26. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the

short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

27. 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

28. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

29. 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the Auction 95 Procedures Public Notice. For Auction 95, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Ms. Wiener at the following e-mail address: auction95@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum

Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 6423, Washington, DC 20554.

30. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports. The Auction 95 Procedures Public Notice provides additional guidance on procedures for submitting application-related information.

h. Winning Bidders Must Disclose Terms of Agreements

31. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

32. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the Auction 95 Procedures Public Notice. These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

j. Antitrust Laws

33. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the Bureau previously reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.

34. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Incumbency Issues

35. There are pre-existing paging incumbent licenses, including public safety entities licensed under either 47 U.S.C. 337 or 47 CFR 1.925. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent

licensees. Geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

a. International Coordination

36. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit a FCC Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the Above 30 Megacycles per Second Agreement with Industry Canada. Although the upper paging channels do not require coordination with Canada, the U.S.-Canada Interim Coordination Considerations for the Band 929-932 MHz, as amended, assigns specific 929 MHz and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 MHz and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 MHz and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement.

b. Quiet Zones

37. Paging licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

iv. Due Diligence

38. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area

licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

39. The Bureau caution potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example there are incumbent operations already licensed and operating in the bands that must be protected. These limitations may restrict the ability of paging licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

40. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses they are seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.

41. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders establishing rules and policies for the lower and upper paging bands.

Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 95 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

42. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 95 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 95 to continue such research throughout the auction. The due diligence considerations mentioned in the Auction 95 Procedures Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

43. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission — including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review — may relate to particular applicants, incumbent licensees, or the licenses available in Auction 95. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

44. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 95. Each potential bidder is responsible for undertaking research

to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

45. Applicants may research the Bureau's licensing database in order to determine which frequencies are already licensed to incumbent licensees. Applicants may obtain information about licenses available in Auction 95 through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>.

46. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

v. Use of Integrated Spectrum Auction System

47. Bidders will be able to participate in Auction 95 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

48. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

vii. Bidding Methodology

49. The bidding methodology for Auction 95 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

viii. Pre-Auction Dates and Deadlines

50. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)by April 30, 2013

Short-Form Application (FCC Form 175)

Filing Window OpensApril 30, 2013; 12:00 noon ET

Short-Form Application (FCC Form 175)

Filing Window Deadline.....May 9, 2013; prior to 6:00 p.m. ET

Upfront Payments (via wire transfer).....June 13, 2013; 6:00 p.m. ET

Mock AuctionJuly 12, 2013

Auction Begins.....July 16, 2013

ix. Requirements for Participation

51. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on May 9, 2013, following the electronic filing procedures set forth in Attachment C to the Auction 95 Procedures Public Notice; (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on June 13, 2013, following the procedures and instructions set forth in Attachment D to the Auction 95 Procedures Public Notice; and (3) Comply with all provisions outlined in the Auction 95 Procedures Public Notice and applicable Commission rules.

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

A. General Information Regarding Short-Form Applications

52. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in

which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

53. Every entity and individual seeking a license available in Auction 95 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on May 9, 2013, following the procedures prescribed in Attachment C to the Auction 95 Procedures Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

54. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions set forth in Attachment C to the Auction 95 Procedures Public Notice and should consult the Commission's rules to ensure that, in addition to the materials all the information required is included within their short-form application.

55. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

56. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted

to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

57. An applicant must select the licenses on which it wants to bid from the “Eligible Licenses” list on its short-form application. To assist in identifying licenses of interest that will be available in Auction 95, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the “Eligible Licenses” list. Selections for one or more of the filter criteria can be made and the system will produce a list of licenses satisfying the specified criteria. Any or all of the licenses in the filtered results may be selected. Applicants will also be able to select licenses from one set of filtered results and then filter on different criteria to select additional licenses.

58. Applicants interested in participating in Auction 95 must have selected license(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on licenses that were not selected on the applicant’s short-form application.

C. Disclosure of Bidding Arrangements

59. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

60. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

61. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, the Bureau reminds applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

62. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership

interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

63. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Designated Entity Provisions

64. Eligible applicants in Auction 95 may claim small business bidding credits. In addition to the information provided applicants should review carefully the Commission's decisions regarding the designated entity provisions.

i. Bidding Credits for Small Businesses

65. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 95, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

66. In the Paging Second Report and Order, 62 FR 11616, March 12, 1997, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the paging service. In the Paging Reconsideration Order, the Commission subsequently increased the size of the bidding credits.

67. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25

percent discount on its winning bid; (2) A bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years will receive a 35 percent discount on its winning bid and; (3) Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.

b. Revenue Disclosure on Short-Form Application

68. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

ii. Attributable Interests

a. Controlling Interests

69. Controlling interests of an applicant include individuals and entities with either de facto or de jure control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences de jure control. De facto control is determined on a case-by-case basis. The following are some common indicia of de facto control: (1) the entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee and; (3) the entity plays an integral role in management decisions.

70. Applicants should refer to 47 CFR 1.2110(c)(2) of the Commission’s rules and Attachment C of the Auction 95 Procedures Public Notice to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

71. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an “identity of interest” with the applicant. The Commission’s definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C to the Auction 95 Procedures Public Notice.

c. Material Relationships

72. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships – referred to as “attributable material relationships” – in determining designated entity eligibility for bidding credits. An applicant or licensee has an “attributable material relationship” when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant’s or licensee’s (1) eligibility for designated entity benefits and (2) liability for “unjust enrichment” on a license-by-license basis.

73. The Commission grandfathered material relationships in existence before the release of the Designated Entity Second Report and Order, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, in such circumstances, the Commission reexamines the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

74. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.

75. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment C to the Auction 95 Procedures Public Notice.

e. Bidding Consortia

76. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 95 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

77. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

G. Provisions Regarding Former and Current Defaulters

78. Current defaulters or delinquents are not eligible to participate in Auction 95, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a

“former defaulter” or a “former delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

79. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

80. Applicants are encouraged to review the Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau’s Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

81. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

82. Applicants are reminded, however, that the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

83. Moreover, prospective applicants in Auction 95 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule, and such review may result in the dismissal of a winning bidder’s long-form application.

H. Optional Applicant Status Identification

84. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is

collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions.

I. Minor Modifications to Short-Form Applications

85. After the deadline for filing initial applications, an Auction 95 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant resulting from a merger, for example will be considered a major modification, and the application will consequently be dismissed.

86. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

87. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant’s legal classification and license selections.

88. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction95@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 95 and the name of the applicant, for example, "Re: Changes to Auction 95 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

89. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

90. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 95. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 95. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

J. Maintaining Current Information in Short-Form Applications

91. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish

additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a “major amendment,” as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction95@fcc.gov. This e-mail must include a subject or caption referring to Auction 95 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant’s license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available April 30, 2013

92. No later than Tuesday, April 30, 2013, an auction tutorial will be available on the Auction 95 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and paging rules. The tutorial will also provide

an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

93. The Auction 95 online tutorial replaces the live bidder seminars that have been offered for many previous auctions. The Bureau believes parties interested in participating in this auction will find the interactive, online tutorial a more efficient and effective way to further their understanding of the auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.

94. The auction tutorial will be accessible from the FCC's Auction 95 web page at <http://wireless.fcc.gov/auctions/95/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the Auction 95 Procedures Public Notice.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on May 9, 2013

95. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C to the Auction 95 Procedures Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on May 9, 2013. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

96. Applications may generally be filed at any time beginning at noon ET on April 30, 2013, until the filing window closes at 6:00 p.m. ET on May 9, 2013. Applicants are strongly encouraged to file

early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on May 9, 2013.

97. An applicant must always click on the SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

98. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

99. After the application filing deadline on May 9, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

100. Commission staff will communicate only with an applicant’s contact person or certifying official, as designated on the short-form application, unless the applicant’s certifying official or contact person notifies the Commission in writing that applicant’s counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to auction95@fcc.gov.

D. Upfront Payments – Due June 13, 2013

101. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the Auction 95 Procedures Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on June 13, 2013.

i. Making Upfront Payments by Wire Transfer

102. Wire transfer payments must be received before 6:00 p.m. ET on June 13, 2013. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

103. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, write “Wire Transfer – Auction Payment for Auction 95.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 95 before the deadline.

104. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. **Each applicant also**

is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.

105. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) All payments must be made by wire transfer; (3) Upfront payments for Auction 95 go to a lockbox number different from the lockboxes used in previous FCC auctions and; (4) Failure to deliver a sufficient upfront payment as instructed by the June 13, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

106. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the Auction 95 Procedures Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

107. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the Auction 95 Comment Public Notice, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license.

At a minimum, therefore, an applicant's total upfront payment must be enough to establish at least 500 bidding units of eligibility to bid on at least one of the licenses selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which they wish to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

108. In the Auction 95 Comment Public Notice, the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no comments on the proposal. The Bureau adopts its proposed upfront payments. The upfront payment and bidding units for each license will be \$500 and 500 bidding units. The complete list of licenses for Auction 95 is available as separate "Attachment A" files at <http://wireless.fcc.gov/auctions/95/>.

109. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In

order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

111. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Specific instructions were provided in the Auction 95 Procedures Public Notice for submission of wire transfer instructions by fax.

F. Auction Registration

112. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

113. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

114. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, July 10, 2013, call the Auctions

Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

115. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

116. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the "Integrated Spectrum Auction System (ISAS) Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 95.

H. Mock Auction – July 12, 2013

117. All qualified bidders will be eligible to participate in a mock auction on Friday, July 12, 2013. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

IV. AUCTION

118. The first round of bidding for Auction 95 will begin on Tuesday, July 16, 2013. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

119. In Auction 95 all licenses will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. The Bureau received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

ii. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

120. In the Auction 95 Comment Public Notice, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives for Auction 95. The Bureau received no comment on this proposal. Because the Bureau finds that the competitive benefits associated with anonymous bidding support adoption of such procedures, it adopts the limited information procedures proposed in the Auction 95 Comment Public Notice.

121. In Auction 95, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

122. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 95 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 95, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 95, it will send to each applicant in Auction 95 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c) – such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest – will be available through the publicly accessible online short-form application database.

123. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 95. While applicants' license selections will not be disclosed until after Auction 95 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain

licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

124. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

125. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

iii. Eligibility and Activity Rules

126. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 95. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units as listed in the complete list of licenses available as separate "Attachment A" files at <http://wireless.fcc.gov/auctions/95/>. Bidding units assigned to each license do not change as prices rise during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the

maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

127. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new and provisionally winning bids.

128. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

129. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureau adopts them for Auction 95. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

130. In the Auction 95 Comment Public Notice, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding

eligibility in Stage Two. The Commission received no comments on this proposal. The Bureau finds, for now, that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages as described in the Auction 95 Procedures Public Notice. Activity Rule Waivers.

131. In the Auction 95 Comment Public Notice, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue.

132. Therefore, the Bureau adopts this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

133. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

134. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this

case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

135. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

v. Auction Stopping Rules

136. For Auction 95, the Bureau proposed to employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops simultaneously on every license. More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 95.

137. The Bureau proposed to exercise the options discussed in the Auction 95 Procedures Public Notice only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids.

The Bureau proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau received no comment on these proposals and adopts them for Auction 95.

vi. Auction Delay, Suspension, or Cancellation

138. In the Auction 95 Comment Public Notice, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue.

139. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasize that it will exercise use of this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

140. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding

round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

141. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. The Bureau may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

142. In the Auction 95 Comment Public Notice, the Bureau did not propose to establish reserve prices for the licenses in Auction 95. The Bureau did, however, propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process. Specifically, for Auction 95, the Bureau proposed to set the minimum opening bid for each license at \$500.

143. The Bureau sought comment on its proposal for minimum opening bids and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids. The Bureau received no comments on our proposed minimum opening bids.

144. The Bureau finds that the proposed minimum opening bids will promote an appropriate auction pace and avoid unnecessarily prolonging Auction 95. The Bureau therefore adopts its proposal to set the minimum opening bid for each license available in Auction 95 at \$500. The complete list of licenses for Auction 95 is available as separate "Attachment A" files at <http://wireless.fcc.gov/auctions/95/>.

iii. Bid Amounts

145. In the Auction 95 Comment Public Notice, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. No comments were received on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 95.

a. Minimum Acceptable Bids

146. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

147. In the Auction 95 Comment Public Notice, the Bureau proposed to use a minimum acceptable bid percentage of 10 percent. The Bureau did not receive any comments on this proposal. Our experience in previous auctions assures us that a minimum acceptable bid percentage of 10 percent is sufficient to ensure active bidding. Therefore, the Bureau will begin the auction with a minimum acceptable bid percentage of 10 percent.

b. Additional Bid Amounts

148. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, etc.

149. The Bureau proposed to start with eight additional bid amounts (for a total of nine bid amounts) per license but also sought comment on whether, in the alternative, to use fewer or no additional bid amounts per license in a given round. The Bureau proposed to use a bid increment percentage of 5 percent. The Bureau received no comments on this proposal.

150. The Bureau also sought comment on the circumstances under which the Bureau should limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which any additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

151. Therefore, the Bureau adopts its proposal to begin the auction with eight additional bid amounts per license. The Bureau will also start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determine that circumstances so dictate. Further, the Bureau proposed to retain the discretion to do so on a license-by-license basis. If the

Bureau exercise this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

152. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

153. In the Auction 95 Comment Public Notice, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No comments were received on this proposal.

154. The Bureau adopts the tied bids proposal. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

155. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 95. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

156. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

157. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

158. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows text files containing bid information to be uploaded.

159. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined.

160. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If multiple bids are submitted for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

161. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

162. In the Auction 95 Comment Public Notice, the Bureau proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals of provisionally winning bids in only one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

163. The Bureau received no comments on this issue. The proposed procedures will provide each bidder with appropriate flexibility during the auction; therefore the Bureau adopts this proposal for Auction 95.

164. Bid Removal. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "undo" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

165. Bid Withdrawal. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the "withdraw bids" function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

166. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case

of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

167. Calculation of Bid Withdrawal Payment. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

168. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the Auction 95 Comment Public Notice, the Bureau proposed to establish this percentage at ten percent for Auction 95 and sought comment on the proposal.

169. The Bureau received no comments on this issue. The Bureau adopted a ten percent payment amount for prior paging auctions, and the Bureau adopts its proposal for a ten percent payment amount for this auction. The Commission will assess an interim withdrawal payment equal to ten percent of the amount of the withdrawn bids. The ten percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment

pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

170. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

viii. Auction Announcements

171. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. POST-AUCTION PROCEDURES

172. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

A. Down Payments

173. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money

on deposit with the Commission for Auction 95 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

B. Final Payments

174. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

175. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 95. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Ownership Disclosure Information Report (FCC Form 602)

176. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.

177. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

178. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must

review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

179. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

180. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

181. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the Tribal Lands Credits link.

F. Default and Disqualification

182. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 95 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

183. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the Auction 95 Comment Public Notice, the Bureau proposed to set the additional default payment for this auction at ten percent of the applicable bid. The Bureau received no comments on this proposal, and it is therefore adopted.

184. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

185. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the

auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

FEDERAL COMMUNICATIONS COMMISSION.

Gary D. Michaels,
Deputy Chief, Auctions and Spectrum Access Division, WTB.

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